

HOUSE BILL 1366

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 8; Title 16; Title 17, Chapter 5 and Title 39, Chapter 16, relative to the court of the judiciary.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-5-304, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a) Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that allege judicial misconduct or incapacity. The complaint shall allege specific facts, not conclusions. If, in the judgment of disciplinary counsel, the complaint establishes probable cause that the conduct complained of violates § 17-5-302, disciplinary counsel shall, subject to review by the investigative panel pursuant to subdivision (b)(3), conduct a preliminary investigation. If the complaint fails to establish probable cause, disciplinary counsel shall, subject to review by the investigative panel pursuant to subdivision (b)(3), dismiss the complaint, or if appropriate, refer the matter to another agency.

(b)

(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether the facts establish probable cause that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (b)(3).

(2) When disciplinary counsel believes there is evidence supporting the allegations against a judge, the counsel shall recommend to the investigative

panel assigned to the case that the panel authorize a full investigation.

Disciplinary counsel may recommend a full investigation when counsel believes that there is evidence that would establish probable cause that a violation of § 17-5-302 has occurred and such evidence could be obtained by subpoena or further investigation. In all other cases, disciplinary counsel shall recommend that the matter be dismissed.

(3) The investigative panel shall review disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it and shall apply to all complaints filed on or after such date.